

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

CASE NO.: 5:09-CR-216-8FL

UNITED STATES OF AMERICA)	
)	
v.)	MOTION TO EXCLUDE
)	WITNESS AND SUPPORTING
ZIYAD YAGHI)	MEMORANDUM OF LAW
_____)	

NOW COMES the Defendant, Ziyad Yaghi, by and through the undersigned counsel and pursuant to the Federal Rules of Evidence, more particularly Rule 615, and hereby requests the Court to order the witnesses of the Government excluded in order that they cannot hear the testimony of other witnesses, and in support of said Motion, shows unto the Court as follows:

STATEMENT OF THE CASE

The Defendant, Ziyad Yaghi, is charged along with Defendants Daniel Patrick Boyd, Hysen Sherifi, Anes Subasic, Zakariya Boyd, Dylan Boyd, Jude Kenan Mohammad and Mohammad Omar Aly Hassan in the Indictment. Defendant, Ziyad Yaghi, pursuant to a two-count indictment dated July 22, 2009 has been charged with the following offense(s):

1. Count One – Conspiracy to provide material support to terrorists; and
2. Count Two – Conspiracy to murder, kidnap, maim, and injure persons in a foreign country.

LEGAL ARGUMENT

1. Due to the nature of the charges against the Defendant, the defense counsel believes that the Government will call multiple witnesses. In order to insure that the

Defendant receives a fair trial, the Defendant requests that the witnesses not discuss their testimony with each other before trial, or after one witness has testified, or before the next witness will testify, and for each witness to testify without hearing the testimony of other witnesses at the trial of this matter.

2. Rule 615 of the Federal Rules of Evidence States:

At the request of a party, the Court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This Rule does not authorize exclusion of (1) a party who is not a natural person, (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation to the party's cause...

3. Rule 615 of the Federal Rules of Evidence allows for the absolute sequestration of prospective witnesses, and mandates that witnesses be prohibited from discussing the case with witnesses who have already testified. U.S. v. Greschner, 802 Fed. 2nd 373 (9th Circuit 1986.)

4. The scope of Rule 615 of the Federal Rules of Evidence also applies to rebuttal witnesses including any rebuttal witnesses who have already given testimony in the case in chief. U.S. v. Ell, 718 Fed. 2nd 291 (9th Circuit 1983).

WHEREFORE, to insure the constitutional rights of Defendant to a fair trial in this matter, the Defense moves, pursuant to Rule 615 of the Federal Rules of Evidence, that the Court order all Government witnesses to be excluded from the courtroom. The purpose of this Order is to prohibit the Government witnesses from hearing the testimony of other Government witnesses. This Order should also include any prospective witnesses to be prohibited from discussing the case with witnesses who have already testified.

This the 12th day of August, 2009.

STUBBS & PERDUE, P.A.

s/ J. Douglas McCullough
J. DOUGLAS MCCULLOUGH
N.C. State Bar I.D. No. 10136
310 Craven Street
P.O. Box 1654
New Bern, NC 28563-1654
Telephone: (252) 633-2700
Facsimile: (252) 633-9600

CERTIFICATE OF SERVICE

I hereby certify that I this day have served a copy of this pleading upon the other parties to this action electronically as indicated to counsel for said parties:

Barbara D. Kocher, AUSA
310 New Bern Ave., Ste 800
Raleigh NC 27601-1461
barb.kocher@usdoj.gov

Jason Harris Cowley
U.S. Attorney's Office
310 New Bern Ave.
Suite 800
Raleigh, NC 27601
Jason.Cowley@usdoj.gov

Bridgett Britt Aguirre
Aguirre Law Office, P.A.
P.O. Box 1167
Fuquay-Varina, NC 27526
aguirrelaw@aol.com

R. Daniel Boyce
Boyce & Isley, PLLC
P.O. Box 1990
Raleigh, NC 27602-1990
dboyce@boyceisley.com

Rosemary Godwin
Federal Public Defender
150 Fayetteville St. Mall
Suite 450
Raleigh, NC 27601-2919
rosemary_godwin@fd.org

Debra C. Graves
F.P.D.
150 Fayetteville St. Mall
Suite 450
Raleigh, NC 27601-8005
Debra_Graves@fd.org

Myron T. Hill, Jr.
Browning & Hill
200 E. Fourth St.
Greenville, NC 27835
mhill@browning-hill.com

Robert J. McAfee
McAfee Law, P.A.
P.O. Box 905
New Bern, NC 28563
rjm@mcafee-law.com

John Keating Wiles
Cheshire Parker Schneider Bryant & Vitale
P.O. Box 1029
Raleigh, NC 27602
keat.wiles@cheshirepark.com

Joseph E. Zeszotarski, Jr.
Poyner & Spruill
P.O. Box 10096
Raleigh, NC 27605
jzeszotarski@poynerspruill.com

This the 12th day of August, 2009.

s/ J. Douglas McCullough
J. DOUGLAS MCCULLOUGH
STUBBS & PERDUE, P.A.
310 Craven Street
P.O. Box 1654
New Bern, NC 28563-1654
Telephone: (252) 633-2700
Facsimile: (252) 633-9600